



Luthra *and* Luthra

LAW OFFICES INDIA

DIRECT TAXATION UPDATES – INCOME TAX LAW

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We extend our best wishes to the recipients of this newsletter.

In **November 2024 Edition** of the Luthra and Luthra Law Offices India – ‘**Direct Tax Monthly Newsletter**’, we have covered some of the pertinent developments in the field of Direct Taxation Law recently.

INCOME TAX

IMPORTANT JUDGMENTS PASSED BY HON’BLE HIGH COURTS IN THE CASES OF:

a. Commissioner of Income Tax (TDS)-2 v. Turner General Entertainment Networks India Pvt. Ltd. dated 06.11.2024 passed by Hon’ble High Court of Delhi.

The Hon’ble High Court of Delhi has dismissed the Revenue's appeal against the Income Tax Appellant Tribunal's (hereinafter referred as “ITAT”) order, wherein it was, *inter alia*, held that for the purpose of calculating the limitation period under Section 275(1)(c) of the Income-tax Act, 1961 (hereinafter referred as “the Act”, the penalty proceedings under Section 271C of the Act are considered to be initiated when the Assessing Officer (hereinafter referred as “AO”) makes a reference to the Joint Commissioner of Income Tax (hereinafter referred as “JCIT”), rather than when the JCIT issues a show cause notice.

b. Principal Commissioner of Income Tax v. Sangeeta Jain dated 08.11.2024 passed by Hon’ble High Court of Delhi.

The Hon’ble High Court of Delhi has held that when the AO accepted the assessee's claim that the land sold by her was agricultural and thus not liable to capital gains tax, without thoroughly verifying all records, it was erroneous and detrimental to the interests of the revenue. Consequently, the Principal Commissioner appropriately exercised his jurisdiction under Section 263 of the Act. The Court also noted that at the time of assessment the AO overlooked the fact that the Tehsildar's certificate, relied upon by the assessee, did not specify the distance of the said land from the nearest municipal limits, which is a crucial requirement under the definition of 'capital asset' in Section 2(14)(iii) of the Act. Additionally, the Court observed that the assessee did not declare any agricultural income from the land during the relevant year. Therefore, the AO's order was erroneous and detrimental to the interests of the revenue and the Principal Commissioner rightly exercised his jurisdiction under Section 263 of the Act.

c. Sanjay Bhandari v. Income Tax Officer dated 08.11.2024 passed by Hon’ble High Court of Delhi:

The Petitioner challenged the summoning order dated 10.05.2019. Criminal Complaint No. 2121/2019 under Section 51(1) of the Black Money (Undisclosed Foreign Income and Assets and Imposition of Tax) Act, 2015 (“the Black Money Act”), contending that prosecution was initiated without completing assessment proceedings. The Hon’ble High



Court of Delhi dismissed the petition, holding that offences under Chapter V of the Black Money Act, including Section 51, are independent of assessment. The Court, *inter alia*, held that prosecution can be initiated if conditions under Section 51(3) of the Black Money Act are satisfied, irrespective of completion of assessment proceedings.

d. Sandeep Hooda v. Pr. Commissioner of Income Tax-7, Delhi & Anr. dated 11.11.2024 passed by Hon'ble High Court of Delhi:

The High Court of Delhi upheld the ITAT's decision, rejecting the assessee's claim for exemption under Section 54 of the Act. The Court observed that the assessee's purported "residential house" on agricultural land comprised makeshift plywood structures lacking essential amenities such as electricity and water connections, failing to qualify as a residential dwelling. The appeal was dismissed as no question of law arose, affirming that mere construction of temporary structures does not meet the requirements of Section 54 of the Act.

e. Pr. Commissioner of Income Tax-6 v. Nucleus Steel Pvt. Ltd. dated 12.11.2024 passed by Hon'ble High Court of Delhi:

The High Court of Delhi, consequently, upheld ITAT's decision, holding that the AO cannot reject an assessee's explanation under Section 68 of the Act without evidence of subterfuge. The assessee justified INR 67.50 crores received from Unitech as an advance for a property sale, with no dispute over its source or creditworthiness. The Court found no basis for the addition, as the transaction was tax-neutral and documentation flaws were immaterial in this context. The High Court of Delhi dismissed the Revenue's appeal.

f. Commissioner of Income Tax (TDS) v. Adma Solutions Pvt. Ltd. dated 12.11.2024 passed by Hon'ble High Court of Delhi:

The Hon'ble High Court of Delhi has ruled that in the case of a company that has undergone a name change, if the AO issued a penalty order under Section 271C for non-compliance with TDS provisions in the company's former name, the Order being passed in company's name did not constitute an incurable defect. Therefore, the penalty order issued in the earlier name was valid.

g. Commissioner of Income Tax (TDS)-2 v. National Highway Authority of India dated 12.11.2024, passed by Hon'ble High Court of Delhi:

The Hon'ble High Court of Delhi has, *inter alia*, held that the capital grant subsidy or financial support provided by the National Highway Authority of India ("NHAI") under a concession agreement on a Build-Own-Operate-Transfer ("BOOT") basis to the concessionaire was intended solely as viability gap funding and the same could not be treated as payment for work performed by a contractor. Consequently, such financial support is not subject to withholding tax under Section 194C of the Act and NHAI was not liable to deduct tax.



h. Grasim Industries Ltd. v. Chief Commissioner of Income Tax (CCIT)(Central)-1 dated 12.11.2024 passed by Hon'ble High Court of Bombay:

The Petitioner sought a waiver of interest under Section 234C of the Act, citing an inability to estimate advance tax payments accurately due to COVID-19 disruptions. The High Court quashed the Chief Commissioner of Income Tax's order rejecting the waiver application, holding that it failed to consider material contentions regarding pandemic-related hardships. The Court directed a fresh consideration of the waiver application, emphasising the need for a reasoned decision addressing the Petitioner's submissions.

i. The Commissioner of Income Tax-III Hyderabad v. M/s. Satiofi Healthcare India Private Limited dated 18.11.2024, Hon'ble High Court of Telangana:

The assessee was engaged in manufacturing the Hepatitis-B vaccine and it entered into an agreement with PFIZER to manufacture and supply vaccines. In return, Rs. 6 crores were paid to the assessee for transferring technical know-how, surrendering rights to future products, and accepting restrictive covenants. The AO treated this receipt as a revenue receipt. The Court, *inter alia*, held that the said amount was for the transfer of capital assets, i.e. patents and technical know-how, and the surrender of rights over future products.

j. M/s Knowell Realtors India Pvt. Ltd. v. Assistant Commissioner of Income Tax dated 19.11.2024, passed by the Hon'ble High Court of Kerala:

The Hon'ble High Court of Kerala addressed the classification of rental income and the jurisdiction of the ITAT. The assessee earned rental income from leased properties and had been consistently assessed under the "Income from House Property" category. However, for the Assessment Year ("AY") 2012-13 and 2015-16, the Revenue reclassified the income as "Business Income" and treated gains from property sales as business income, deviating from the prior assessment practice. The First Appellate Authority ruled favouring the assessee, classifying the income under the "House Property" and "Capital Gains" heads. Upon Revenue's appeal, ITAT initially dismissed the case due to low tax effect per Central Board of Direct Taxes Circulars but later restored it on Revenue's rectification plea, citing an audit objection. The High Court held that Tribunal exceeded its statutory jurisdiction by admitting a belated rectification application under Section 254(2) of the Act, which prescribes a six-month limitation period. It ruled that the Tribunal improperly exercised a review-like power, which it lacked. Substantively, the Court emphasised the need for consistency in tax assessments and rejected the Revenue's argument that property sales during the disputed years transformed rental activities into a business. The Court reinstated the classification of rental income under "House Property" and gains from property sales under "Capital Gains," setting aside ITAT's decision and ruling in favour of the assessee.



k. Pr. Commissioner of Income Tax-7, Delhi v. Naveen Kumar Gupta dated 20.11.2024 passed by Hon'ble High Court of Delhi:

The Hon'ble High Court of Delhi, *inter alia*, held that where AO initiated reassessment proceedings based on material which included information found during search conducted in respect of another person and information as obtained from Investigation Wing, since jurisdictional conditions to initiate further steps under section 153C of the Act were not satisfied, non obstante clause as used in section 153C of the Act could not be read to completely exclude provisions of section 147 of the Act and thus, decision of AO to reassess income of assessee under section 147 of the Act could not be faulted.

AS HELD BY HON'BLE ITAT IN THE CASES OF:

a. Pradip Chandra Roy v. ITO dated 04.11.2024 passed by Hon'ble ITAT Kolkata Bench:

The Tribunal quashed a reassessment Order under Section 147 of the Act, for AY 2014-15, holding that the notice under Section 148, though signed on 31.03.2021, was served on 28.12.2021, well beyond the limitation period. The AO assessed the entire stamp duty value of INR 16,83,600 as undisclosed capital gains without considering co-ownership or verifying records like the sale deed. The ITAT ruled that mere signing does not equate to issuance of notice under Section 148 of the Act. Consequently, all orders based on the invalid notice were set aside.

b. Seema Jain v. ITO dated 04.11.2024 passed by Hon'ble ITAT Delhi Bench:

The Delhi Bench of the Hon'ble ITAT has determined that when information is acquired from a third-party search, the appropriate procedure for assessment is to proceed under Section 153C of the Act, rather than Section 143(3).

c. Tricentis GmbH v. DCIT dated 06.11.2024 passed by Hon'ble ITAT Delhi Bench:

The Delhi Bench of the Hon'ble ITAT has ruled that income derived from the sale of software licenses by the Austria-based non-resident assessee cannot be taxed as royalty income under the India-Austria Double Taxation Avoidance Agreement ("**DTAA**"). Instead, such income should be taxed as business income in India, but only if the assessee has a Permanent Establishment (PE) in India, which was not present in this case.

d. Genpact India Pvt. Ltd. v. DCIT dated 06.11.2024 passed by Hon'ble ITAT Delhi Bench:

The Tribunal quashed the assessment order passed under Section 143(3) of the Act for AY 2015-16 as it was framed in the name of a non-existent entity, "Genpact India," post its merger with "Genpact India Private Limited" effective from 30.04.2016. The Tribunal held



that such an error is not a procedural irregularity which is curable under Section 292B of the Act, rendering the assessment void ab initio. As a result, the Department's appeal became infructuous, and the assessee's appeal was allowed.

e. AVA Resources Private Limited v. DCIT dated 07.11.2024 passed by Hon'ble ITAT Delhi Bench:

The assessee challenged the Commissioner of Income Tax (Appeals) dismissal of its appeal due to a 35-day delay in filing, citing bona fide reasons, including advice to initially pursue a writ petition before the Hon'ble High Court of Delhi. The writ was later withdrawn, and the appeal was promptly filed thereafter. The ITAT observed that the delay was not intentional and that the assessee provided a valid explanation, satisfying the criteria for condonation under the principles of natural justice. The ITAT held that the CIT(A) erred in refusing to condone the delay. It restored the matter to the CIT(A) for fresh adjudication on merits, directing due opportunity to the assessee. The ITAT emphasised that technical lapses should not deny substantive justice. The appeal was allowed for statistical purposes, setting aside the order dated 16.07.2024.

RECENT NOTIFICATIONS AND LETTERS ISSUED BY CENTRAL BOARD OF DIRECT TAXES (“CBDT”):

a. Circular no. 15/2024 dated 04.11.2024:

The Central Board for Direct Taxes (“CBDT”) has notified monetary limits for reducing or waiving interest under Section 220(2) of the Act, which imposes 1% monthly interest on delayed tax payments. Authorities are authorised as follows:

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| Pr. CIT/CIT: | Waiver up to INR 50 lakh. |
| CCIT/DGIT: | Waiver from INR 50 lakh to INR 1.5 crore. |
| Pr. CCIT: | Waiver above INR 1.5 crore. |

Waivers require taxpayers to prove genuine hardship, uncontrollable circumstances causing the delay, and cooperation with tax inquiries or recovery proceedings. The circular applies immediately to streamline relief for taxpayers facing exceptional difficulties.

b. Circular no. 16/2024 dated 18.11.2024:

CBDT has issued guidelines under Section 119(2)(b) for condoning delays in filing Forms 9A, 10, 10B, and 10BB for AY 2018-19 onwards. Delays of up to 365 days will be addressed by Principal Commissioner of Income Tax, while delays exceeding 365 days will be handled by Principal Chief Commissioner of Income Tax or equivalent authorities. Authorities must ensure the delay was caused by reasonable factors and assess genuine hardship. For Form 10, compliance with Section 11(5) regarding investments of accumulated funds must also



be verified. Applications must be filed within 3 years from the end of the relevant AY and resolved within 6 months of receipt. Earlier instructions and guidelines to be superseded by this.

c. Notification No. 06/2024 dated 19.11.2024.

The CBDT has mandated electronic filing of Forms 42, 43, and 44 under Rule 131 of the Income Tax Rules, 1962, effective 22.11.2024.

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| Form 42: . | Appeal against refusal or withdrawal of recognition for a provident fund |
| Form 43: | Appeal against refusal or withdrawal of approval for a superannuation fund. |
| Form 44: | Appeal against refusal or withdrawal of approval for a gratuity fund. |

The forms must be filed and verified electronically to enhance compliance and streamline processes.



This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or Direct Tax in general), please feel free to contact Rubal Bansal, at the below mentioned coordinates.

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